

JAN 28 2004

T-083 P.001 F-187

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To: DeShone Martino, Examining Group 1600
Company: Commissioner Of Patents And Trademarks
Fax Number: 1-703-872-9306
Phone Number: 1-703-306-4083
Application No.: 09/837,562

Total Pages
Including Cover: 84

From: Elaine C. VonSpreckelsen, Sec. to Carl A. Forest

Sender's Direct Line: 303-894-6163

Date: January 28, 2004

Client Number: 012439.0104PTUS (Formerly 12439.101B)

Comments:

ANCHORAGE

DALLAS

DENVER

NORTHERN VIRGINIA

WASHINGTON, D.C.

Serial No.: 09/837,562
Filed: 19 Apr 2001
Confirmation No.: 7515

Group No. 1623
Examiner: McIntosh, Traviss C., III

Attached please find the following documents to be entered in the above application:

1. Response To Notice Of Improper Request For Continued Examination (RCE) (2 pages)
2. Copy of Notice Of Improper Request For Continued Examination (RCE) mailed January 8, 2004 (2 pages)
3. Copy of response to Final Office Action mailed July 28, 2003, with Declaration Of Edward Larry McCleary attached, faxed October 28, 2003 with fax confirmation report (24 pages)
4. Supplemental Submission (14 pages)
5. Declaration Of Jan F. Baumgardner, M.D., with exhibits (41 pages)

If you should have any questions, please do not hesitate to contact me. Thank you for your assistance in this matter.

If you did not receive all of the pages or find that they are illegible, please call 303-830-1776.

Confidentiality Note: The documents accompanying this facsimile contain information from the law firm of Patton Boggs LLP which is confidential and/or privileged. The information is intended only for the use of the individual or entity named on this transmission sheet. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this facsimile is strictly prohibited, and that the documents should be returned to this Firm immediately. If you have received this facsimile in error, please notify us by telephone immediately so that we can arrange for the return of the original documents to us at no cost to you.

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JAN 28 2004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Application Serial No. 09/837,562)	Group Art Unit: 1623
Filing Date: April 19, 2001)	Examiner: McIntosh, Travis C., III
For: Composition And Method For)	Docket No: 012439.0104PTUS
Normalizing Impaired Or)	(Formerly 12439.101B)
Deteriorating Neurological)	Confirmation No.: 7515
Function)	
Inventor: Edward Larry McCleary)	Paper No.: 14

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CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8

I hereby certify that this correspondence, along with all papers referred to as being transmitted, are being facsimile transmitted to the Patent and Trademark Office Fax No. (703) 872-9306.

January 28, 2004
Date

Elaine C. Von Spreckelsen
Elaine C. Von Spreckelsen

COMMISSIONER FOR PATENTS
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450

Attn: DeShone Martino, Examining Group 1600

**RESPONSE TO NOTICE OF IMPROPER REQUEST FOR CONTINUED
EXAMINATION (RCE)**

Applicant has received a Notice Of Improper Request For Continued Examination (RCE), which was mailed on January 8, 2004. A copy of this Notice is enclosed. The Notice states that the RCE was not accompanied by a submission as required under CFR 1.114.

It is respectfully submitted that the Notice was sent in error. A response to the outstanding Final Office Action dated July 28, 2003 was submitted on October 28, 2003. This response included an Amendment. An Advisory Action was received on December 16, 2003 indicating that the Amendment would not be entered. A copy of this response is enclosed. The RCE form has a box 1(a) that indicates "If a Final Office Action is outstanding, any amendment filed after the Final Office Action may be considered as a submission even if this box is not checked." MPEP 706.07(h) II also states that a

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Response To Notice Of Improper Request
For Continued Examination (RCE)

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previously filed amendment after final (whether or not entered) may satisfy the submission requirement.

If a specific request to consider the previously submitted response is required to meet the RCE requirements (which is not believed to be the case), then please consider this as such a request.

In case the previously submitted response is somehow deemed to be ineffective as a submission, then a Supplemental Submission is enclosed herewith. This Supplemental Submission includes a Declaration Of Jan F. Baumgardner, M.D., with two exhibits. Please enter this Supplemental Submission in any case.

For the above reasons, it is believed that the RCE request filed on December 24, 2003 was proper and no additional fee is seen to be required. However, if an additional extension of time fee of \$475 for a small entity third-month extension is required, please consider this to be a request of an extension of time of an additional month and charge the fee to Deposit Account No. 50-1848. If any further fee is required, please charge it to Deposit Account No. 50-1848.

Respectfully submitted,
PATTON BOGGS LLP

By: 

Carl Forest, Reg. No. 28,494
Telephone: (303) 894-6114
Facsimile: (303) 894-9239
Customer No.: 24283

Serial No. 09/837,562
Response To Notice Of Improper Request
For Continued Examination (RCE)

Page 2
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UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
www.uspto.gov

12439.104

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/837,562	04/19/2001	Edward Larry McCleary	12439.101B	7515

24283 7590 01/08/2004
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LOUISVILLE, CO 80027

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JAN 12 2004

Patton Boggs LLP

EXAMINER

MCINTOSH III, TRAVISS C

ART UNIT PAPER NUMBER

1623

DATE MAILED: 01/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Resp to Notice of Improper
Action Due RCE
Due Date 1/28/04
Docketed On 1/13/04
By mes Atty Caj



Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

APPLICATION NUMBER

FILING DATE

FIRST NAMED APPLICANT

ATTY. DOCKET NO./TITLE

DATE MAILED:

NOTICE OF IMPROPER REQUEST FOR CONTINUED EXAMINATION (RCE)

The request for continued examination (RCE) under 37 CFR 1.114 filed on 12-24-03 is improper for reason(s) indicated below:

- ☐ 1. Continued examination under 37 CFR 1.114 does not apply to an application for a design patent. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d).
- ☐ 2. Continued examination under 37 CFR 1.114 does not apply to an application that was filed before June 8, 1995. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d).
- ☐ 3. Continued examination under 37 CFR 1.114 does not apply to an application unless prosecution in the application is closed. If the RCE was accompanied by a reply to a non-final Office action, the reply will be entered and considered under 37 CFR 1.111. If the RCE was not accompanied by a reply, the time period set forth in the last Office action continues to run from the mailing date of that action.
- ☐ 4. The request was not filed before payment of the issue fee, and no petition under 37 CFR 1.313 was granted. If this application has not yet issued as a patent, applicant may wish to consider filing either a petition under 37 CFR 1.313 to withdraw this application from issue, or a continuing application under 37 CFR 1.53(b).
- ☐ 5. The request was not filed before abandonment of the application. The application was abandoned, or proceedings terminated on _____. Applicant may wish to consider filing a petition under 37 CFR 1.137 to revive this abandoned application.
- ☐ 6. The request was not accompanied by the fee set forth in 37 CFR 1.17(e) as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.
- ☒ 7. The request was not accompanied by a submission as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.

Note: If a request for a continued prosecution application (CPA) under 37 CFR 1.53(d) has been filed in the utility or plant application (including a previously filed CPA) that was filed on or after May 29, 2000, the request for a CPA has been treated as a RCE because the CPA practice no longer applies to such application. The constructive RCE, however, is improper for reason(s) indicated above.

A copy of this notice MUST be returned with any reply.

Direct the reply and any questions about this notice to:

DeShane Martin Examining Group 1600

(703) 30 6-4083
FORM PTO-2051 (Rev. 3/2001)

Confirmation Report - Memory Send

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End time : 10-28 02:40pm
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To: Examiner Travis C. McIntosh, III
Company: Commissioner Of Patents And Trademarks
Fax Number: 1-703-305-3014
Phone Number: 1-703-308-9479
Application No.: 09/837,562
Total Pages Including Cover: 24
From: Elaine C. Vanspreckelsen, Secretary to Carl A. Forest
Sender's Direct Line: 303-894-8163
Date: October 28, 2003
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Comments:
Serial No.: 09/837,562 Group No. 1623
Filed: 19 Apr 2001 Examiner: McIntosh, Travis C., III

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2. Declaration Of Edward Larry McCleary (7 pages)

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MCS
10/29/03
h

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